

ESTTA Tracking number: **ESTTA689993**

Filing date: **08/17/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                           |  |
|---------------------------|--|
| Proceeding                | 91222738   |
| Party                     | Defendant<br>PPP&C, Inc.   |
| Correspondence<br>Address | CHRISTOPHER CHATHAM<br>CHATHAM & HOGAN, LLP<br>2312 W. OLIVE AVE., SUITE D<br>BURBANK, CA 91506<br><br>chris@chathamhogan.com;jv@chathamhogan. |
| Submission                | Answer   |
| Filer's Name              | Christopher Chatham  |
| Filer's e-mail            | chris@chathamhogan.com   |
| Signature                 | /Christopher Chatham/  |
| Date                      | 08/17/2015   |
| Attachments               | Answer (081715).pdf(4519470 bytes )  |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.: 86/248555  
Published in the *Official Gazette* on: March 10, 2015

Trademark:



International Flora Technologies, LTD.,

Opposer,

v.

PPP&C, Inc.,

Applicant.

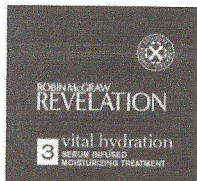
) U.S. Opposition No. 91222738  
)  
)  
) I hereby certify that this correspondence and all marked  
) attachments are being electronically filed with the Trademark  
) Trial and Appeal Board of the U.S. Patent and Trademark Office  
) through their website located at <http://estta.uspto.gov> on:  
)  
) August 17, 2015  
)  
) Christopher Chatham  
) (name)

**ANSWER TO NOTICE OF OPPOSITION AND  
AFFIRMATIVE DEFENSES**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir:

PPP&C, Inc. ("Applicant") hereby answers the Notice of Opposition filed by International Flora Technologies LTD. ("Opposer") against registration of Applicant's mark



, U.S. Application Serial No. 86/248,555, as set forth below.

1. Answering Paragraph 1 of the Notice of Opposition, Applicant admits the allegations contained therein.

2. Answering Paragraph 2 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly denies the allegations set forth in Paragraph 2.

3. Answering Paragraph 3 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly denies the allegations set forth in Paragraph 3.

4. Answering Paragraph 4 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly denies the allegations set forth in Paragraph 4.

5. Answering Paragraph 5 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and accordingly denies the allegations set forth in Paragraph 5.

6. Answering Paragraph 6 of the Notice of Opposition, Applicant denies the allegations contained therein.

7. Answering Paragraph 7 of the Notice of Opposition, Applicant denies the allegations contained therein.

8. Answering Paragraph 8 of the Notice of Opposition, Applicant denies the allegations contained therein.

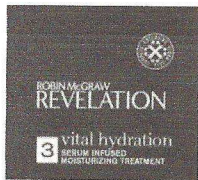
9. Answering Paragraph 9 of the Notice of Opposition, Applicant denies the allegations contained therein.

#### **AFFIRMATIVE DEFENSES**

Applicant alleges the following affirmative defenses:

### **FIRST AFFIRMATIVE DEFENSE**

Applicant alleges that the Opposer is estopped from alleging confusion and cannot be damaged by the registration of Applicant's Mark as Opposer failed to oppose U.S. Application Serial No. 85/755310 for the mark "FLORA CELL" also owned by Applicant for the exact same goods as identified in Applicant's Mark which has since matured to registration. Moreover, as Applicant owns a registration for the mark "FLORA CELL" for the exact same goods as identified in the subject application, the case *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 160 USPQ 715 (CCPA 1969) is analogous to this situation. In *Morehouse*, the court recognized that when an applicant owns a prior registration for the same mark identifying the same goods that are the subject mark and goods of the proposed application that "the opposer cannot be further injured because there already exists an injurious registration" and therefore an additional registration cannot cause injury. Such is also clearly the case here between the two marks "



" and "FLORA CELL" for the exact same goods. As Opposer declined to oppose Applicant's mark "FLORA CELL," Opposer's present opposition is without merit.

### **SECOND AFFIRMATIVE DEFENSE**

Opposer's alleged *prime facie* rights, if any, based on its registrations are limited to the specific goods listed in Opposer's purported registrations and do not extend to any of the goods listed in Applicant's application.

### **THIRD AFFIRMATIVE DEFENSE**

Applicant alleges that due to the significant differences between the parties' respective marks, there is no likelihood of confusion, mistake or deception between Applicant's Mark and the alleged marks of the Opposer.



#### **FOURTH AFFIRMATIVE DEFENSE**

The only element in common between Applicant's Mark and the marks alleged by Opposer is the term "flora." The term "flora" is a very weak term in relation to the goods allegedly offered by the Opposer, and cannot serve as a basis for a finding of a likelihood of confusion between the Applicant's Mark and the alleged marks of the Opposer. Applicant notes that there are numerous registrations for marks containing the term "flora" for cosmetics and related goods in Class 3 and chemicals for use in the manufacture of cosmetics in Class 1.

It is abundantly clear that the term "flora" is weak and should be afforded narrow rights due to the coexistence of Opposer's marks and the registrations listed in Tables A and B below. Applicant has listed over 30 different entities which have registrations containing the term "flora" for cosmetics and related goods in Class 3 and chemicals for use in the manufacture of cosmetics in Class 1.

It is evident that consumers and potential consumers are able to distinguish slight variations in a mark which contain the term "flora." Thus, the very existence of these "flora" containing registrations demonstrate there is no likelihood of confusion between Applicant's mark and Opposer's marks listed in the Opposition.

Table A, below, identifies a selection of marks that registered containing the term "flora" that were filed after at least one of Opposer's marks. In other words, although Opposer had a chance to oppose these "flora" marks, Opposer failed to do so. These actions – or lack thereof – are inconsistent with Opposer's current allegation that it will be damaged by the registration of

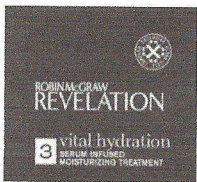
Applicant's  mark.

Table B, below, identifies a selection of registered marks containing the term “flora” that were filed before Opposer’s marks. Thus, Opposer, which obtained its own “flora” marks over the earlier third party “flora” registrations in Table B, now appears to argue that it has exclusive rights to the term “flora” in at least Class 3 for cosmetics and related goods and chemicals for use in the manufacture of cosmetics in Class 1.

TABLE A

| Mark                            | Class | Filing and Reg.                         | Reg. No. | Owner Name   |
|---------------------------------|-------|---|----------|--|
| FLORA AMERICA                   | 3     | February 19, 1993<br>September 28, 1993 | 1794610  | Kingport Corporation                                     |
| FLORACEUTICAL                   | 1     | June 27, 1994<br>April 1, 1997          | 2049467  | Bio-Botanica, Inc.                                       |
| FLORASANTOL                     | 1     | June 28, 1994<br>October 1, 1996        | 2004813  | Takasago Koryo Kogyo<br>Kabushiki Kaisha                 |
| FLORA                           | 3, 5  | September 23, 1994<br>September 3, 1996 |          | Flora Manufacturing and<br>Distributing Ltd.             |
| TERRA FLORA                     | 3     | June 2, 1995<br>February 11, 1997       | 2037820  | Rutledge, Michael  |
| FLORANTONE                      | 1     | June 16, 1995<br>June 30, 1998          |          | Takasago Koryo Kogyo<br>Kabushiki Kaisha                 |
| FLORAMAT                        | 1     | November 24, 1997<br>January 12, 1999   | 2169852  | Kao Kabushiki Kaisha                                     |
| FLORACIDE                       | 3     | April 17, 1998<br>December 28, 1999     | 2304815  | Pevonia International, LLC                               |
| ANGEL FLORA                     | 3     | May 21, 1999<br>March 14, 2000          | 2329716  | Prasad Gifts, Inc.                                       |
| FLORAE                          | 3     | June 15, 2000<br>October 9, 2001        | 2495965  | Laboratoire Garnier & Cie L'Oreal<br>and Pierre Feuillet |
| BHW HYDRO FLORA<br>FIRMING MASK | 3     | October 6, 2000<br>July 2, 2002         | 2587607  | Parrinello, Vincene                                      |
| FLORASERUM                      | 1     | March 27, 2001<br>October 22, 2002      | 2638651  | Bio-Botanica, Inc  |
| FLORA D'ESSARTS                 | 3     | April 24, 2001<br>January 7, 2003       | 2671277  | Flora D'Essarts  |

| Mark                                     | Class       | Filing and Reg.                        | Reg. No. | Owner Name  |
|--|-------------|--|----------|---|
| FLORA-WAX                                | 3           | November 15, 2001<br>October 7, 2003   | 2772620  | Pevonia International, LLC                                  |
| BIO FLORA NATURAL BIO-<br>FLORA          | 3           | June 11, 2003<br>September 4, 2007     | 3287287  | Communication & Marketing<br>Corp.                          |
| FLORACTIVE                               | 3, 5        | April 26, 2004<br>January 24, 2006     | 3050967  | Caster  |
| FLORAME                                  | 3, 5, 9, 21 | December 7, 2004<br>June 13, 2006      | 3104187  | Florame   |
| FLORA BELLA DE LALIQUE                   | 3           | March 4, 2005<br>April 4, 2006         | 3076944  | Lalique Parfums SA  |
| HAWAIIAN FLORA                           | 3           | May 11, 2007<br>August 4, 2009         | 3663984  | Alexander, Tracey   |
| SEAFLOA WILD ORGANIC<br>SEAWEED SKINCARE | 3           | July 9, 2007<br>July 1, 2008           | 3459190  | Bernard, Diane  |
| FLORA BY GUCCI                           | 3           | August 2, 2007<br>May 26, 2009         | 3627732  | Gucci America, Inc.   |
| FLORA BY GUCCI                           | 3           | August 2, 2007<br>May 26, 2009         | 3627729  | Gucci America, Inc.   |
| FLORA-NUTRITIVE<br>COMPLEX               | 3           | August 24, 2007<br>February 24, 2009   | 3578564  | BC International Cosmetic &<br>Image Services, Inc          |
| FLORACIL                                 | 3           | March 27, 2009<br>December 8, 2009     | 3722696  | Européenne De Produits De<br>Beauté                         |
| AMAZONN FLORA                            | 3           | September 17, 2010<br>August 30, 2011  | 4018379  | Rundle, Randy DBA Randy<br>Rundle                           |
| LF LIQUIDFLORA                           | 3, 35       | September 5, 2011<br>November 20, 2012 | 4244018  | Liquid Flora S.R.L.   |
| FLORABELLE                               | 3           | October 12, 2011<br>February 18, 2014  | 4483281  | Space Brands Limited  |
| FLORABOTANICA<br>BALENCIAGA              | 3           | February 9, 2012<br>May 6, 2014        | 4526232  | Balenciaga  |
| FLORA MEDICA                             | 3           | May 23, 2012<br>February 26, 2013      | 4295014  | Cooksley, Valerie   |
| YELLOFLORA                               | 3           | May 28, 2012<br>August 27, 2013        | 4390531  | Baxam, Deanna L.  |
| ACQUAFLOA                                | 3           | May 31, 2012<br>February 24, 2015      | 4692781  | Krenak Do Brasil Industria e<br>Comercio De Cosméticos Ltda |
| FLORA CELL                               | 3           | October 16, 2012                       | 4580843  | PPP&C, Inc.   |



| Mark       | Class | Filing and Reg.                    | Reg. No. | Owner Name     |
|------------|-------|------------------------------------|----------|----------------|
|            |       | August 5, 2014                     |          |                |
| SEAFLOA    | 3     | July 16, 2013<br>February 18, 2014 | 4485150  | Bernard, Diane |
| FLORALISTA | 3     | August 30, 2013<br>April 15, 2014  | 4513195  | Kenzo          |

TABLE B

| Mark      | Class | Filing and Reg.                     | Reg. No. | Owner Name          |
|-----------|-------|-------------------------------------|----------|---------------------|
| FLORALINE | 3     | September 30, 1952<br>June 16, 1953 | 0576116  | Charabot & Co., Inc |
| FLORAFREE | 3     | April 21, 1980<br>December 20, 1983 | 1261389  | DEB                 |

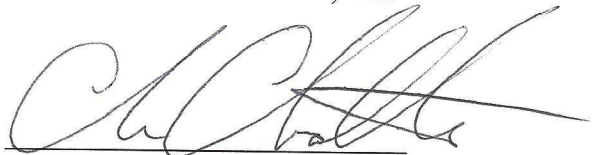
WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark.

Respectfully submitted,

CHATHAM & HOGAN, LLP

Date: August 17, 2015

By:



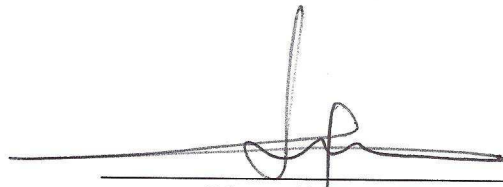
Christopher Chatham  
2312 W. Olive Ave., Suite D  
Burbank, CA 91506  
Attorney for Applicant



**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** upon Opposer's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on August 17, 2015, addressed as follows:

Adam R. Stephenson, LTD.  
40 W. Baseline Rd., Ste 101  
Tempe, AZ 85283

  
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Lia Dalirian